



STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/04/01	Bill No:	AB 172
Tax:	Sales and Use	Author:	Reyes
Board Position:		Related Bills:	AB 1965 (2000)

BILL SUMMARY

This bill would authorize the Board of Equalization to release the names and addresses of individuals who are registered with, or are holding licenses or permits issued by the Board, to a debt collector, as specified, and would provide the Board with the sole discretion to approve a debt collector, determine violations, and impose penalties.

ANALYSIS

Current Law

Section 1 of Article I of the California Constitution states:

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

The Information Practices Act, or IPA (commencing with Section 1798 of the Civil Code), provides that state agencies shall only maintain necessary personal information in their records, as specified, and shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains, with certain exceptions. For example, the Board provides information to confirm the existence of seller's permits, or resale certificates, to individuals requesting it.

Personal information may be disclosed pursuant to the Public Records Act, or PRA (commencing with Section 6250 of the Government Code), which provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record. Confidential information, as specified within each tax or fee program, is exempt from disclosure under the PRA and may not be released unless specifically authorized by the Governor or with the taxpayer's consent.

As amended by AB 1965 (Leach), Chapter 962, Statutes of 2000, the IPA prohibits the release of the names and addresses of *individuals* who are registered with, or are holding licenses or permits issued by, the State Board of Equalization, except as necessary to verify resale certificates or administer the tax and fee provisions of the Revenue and Taxation Code, as specified. The IPA permits the Board to provide names and addresses of *partnership, corporate, or other business organization* permit holders to commercial users of the information, provided that any related state costs

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are paid from fees received by the Board. In addition, current law provides that the Board may release the names and addresses of *all* permit holders to, and does not limit the use by, any federal or state agency, or local government, of any data collected by the Board that is otherwise authorized by law.

Proposed Law

This bill would amend Sections 1798.56 and 1798.69 of the Civil Code to specify that the Board is not prohibited from releasing the names and addresses of individuals who are registered with, or are holding licenses or permits issued by, the State Board of Equalization to a debt collector for the sole purpose of collection of a debt owed by those individuals. The bill would also provide the Board with the sole discretion to approve a debt collector, determine violations, and impose penalties.

In General

Currently, the Board provides customized “mailing lists” of the names and addresses of partnerships, corporations, or other business organizations that are registered with the Board under the Sales and Use Tax Law, and also has a “searching service” that provides nonconfidential taxpayer information. Both services are provided to private sector requestors for a fee that allows the Board to recoup the costs associated with providing these services. *Prior to the enactment of AB 1965, information regarding individual taxpayers was also available in accordance with the IPA.*

Requestors of mailing lists, who largely consist of direct-mail marketers, must specify the media option (computer printout, labels, magnetic tape, etc.) and the selection option (by geographic area, business code, or tax program). The information provided by the Board includes the business name, corporation name, and mailing address. Additional information such as the account number, business address (if different than the mailing address), business code, ownership designation (partnership, corporation, etc.), start date, and tax area may be provided depending on the media option selected. This information is also available on a weekly basis, printed on 3 x 5 cards, and may specify new accounts, changes, close-outs, reinstatements, or any combination.

The Board searching service is a fee-based method by which taxpayers, organizations, and individuals may obtain a business owner's name, business address, and account status (open or closed). The overlying authority that allows this service to be provided is the PRA. Personal or confidential data and copies of file materials are not available through the searching service. Requests for the searching service may come from debt collectors, attorneys, banks and mortgage companies, and wholesalers (attempting to verify resale certificates). Resale certificate validation is also available free of charge on the Board website.

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Background

The IPA was added by SB 170, Chapter 709 of 1977, effective July 1, 1978. As originally enacted, the IPA prohibited the commercial sale or distribution of names and addresses of individuals, defined as natural persons (sole proprietors were considered natural persons for purposes of the IPA).

Effective September 19, 1978, an urgency statute (SB 1429, Chapter 874 of 1978) was enacted that changed the definition of "individual" to mean "a natural person acting in his or her individual and private capacity." By changing the definition of individual, the Board was again allowed to provide all permittee names and addresses as it had prior to the enactment of SB 170.

Effective January 1, 1981, the IPA was amended (AB 502, Chapter 174 of 1980) to again define the term "individual" to mean "a natural person," so that the name and address of any person registered with the Board as an individual owner (sole proprietor) would be subject to the restrictions of the IPA. This change once again prohibited the Board from providing names and addresses of individual permit holders, until the enactment of AB 1355 (Chapter 1001 of 1982) effective January 1, 1983.

Effective January 1, 2001, the IPA was amended (AB 1965, Chapter 962 of 2000) to prohibit the release of the names and addresses of individuals who are registered with, or are holding licenses or permits issued by, the State Board of Equalization, except as necessary to verify resale certificates or administer the tax and fee provisions of the Revenue and Taxation Code, as specified. In addition, current law does not prohibit the release to, or limit the use by, any federal or state agency, or local government, of any data collected by the Board that is otherwise authorized by law. Data collected by the Board remains available to federal, state, and local government agencies for purposes of administering the Revenue and Taxation Code.

COMMENTS

- 1. Sponsor and purpose.** This bill is sponsored by the California Association of Collectors in an effort to allow debt collectors access to the Board's database of individual permittee name and address information so that they can locate and collect debts owed by those individuals.
- 2. The April 4, 2001 amendments to the bill** define debt collector, require the debt collector to sign an agreement under penalty of perjury that the information requested would only be used for debt collections, and grant the Board sole discretion to approve debt collectors, determine violations, and impose penalties.
- 3. This bill would provide a special exemption for debt collectors.** Individuals who request a seller's permit from the Board are required by law to provide their name and address on the application before they may obtain a permit. This bill would require the Board of Equalization to release those names and addresses to debt collectors. Although the Board maintains this information, there may be other more appropriate means by which debt collectors may obtain individuals' names and addresses. Prior to January 1, 2001, debt collectors had access to this information,

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as did other entities such as law firms, accounting firms, etc. This bill would permit only debt collectors to once again receive this information.

4. **This bill would provide the Board with the sole discretion to approve a debt collector, determine violations, and impose penalties.** These provisions would necessitate the drafting of procedures and criteria that the Board would use to determine which businesses are debt collectors and the establishment of hearing procedures to determine violations and penalties.
5. **Related Legislation.** This bill is related to AB 1965 (Chapter 962, Statutes of 2000). Assembly Bill 1965 was a Board-sponsored bill that was introduced during the previous Legislative Session to address complaints from permit holders who did not want their names and addresses made available to direct mail marketers. In particular, individuals who work from their homes have complained to both the Board and the Legislature about the public release of their home addresses. The Board collects information from permit holders for use in the tax collection system. In order to protect the privacy of taxpayer information, the Board Members felt that this information should not be released, although a special exemption was provided to verify the existence of a resale certificate and to administer the tax and fee provisions of the Revenue and Taxation Code. This bill moves away from the direction the Board and the Legislature took in enacting AB 1965 last year.

COST ESTIMATE

The Board could incur absorbable costs to accommodate workload associated with informing staff and the public of the law change, and further reprogramming to allow information on individual taxpayers to be released only to debt collectors that request it. These services are provided to requestors for a fee that allows the Board to recoup the associated costs.

REVENUE ESTIMATE

This bill would not impact the state's revenues.

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